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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

PAUL E. PLESHA, JAMES E. MABBUTT AND MYRON L. KERN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgments entered in this case on November 30, 1955, and on January 5, 1956, by the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the District Court (R. 110-123) is reported at 123 F. Supp. 593. The opinion of the Court of Appeals (Appendix A, *infra*, pp. 21-31) is reported at 227 F. 2d 624. A supplemental *per curiam* opinion of the Court of Appeals (Appendix A, *infra*, p. 32) is not officially reported.

JURISDICTION

The judgment of the Court of Appeals as to respondent Plesha was entered on November 30, 1955 (Appendix A, *infra*, pp. 31-32); its judgment as to respondents Mabbutt and Kern was entered on January 5, 1956 (Appendix A, *infra*, p. 33). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, former servicemen are obligated personally to reimburse the United States for its payment of defaulted premiums on their commercial life insurance policies after they requested that, pursuant to that Act, their policies be protected against lapse during their period of military service.

STATUTES INVOLVED

The pertinent parts of the Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1178, 50 U.S.C. App. (1940 ed.) 510, *et seq.*, and of its 1942 Amendment, 56 Stat. 769, 50 U.S.C. App. 541-548, are set forth in Appendix B, *infra*, pp. 33-47.

STATEMENT

Respondents, former servicemen, brought this suit against the United States to recover amounts which had been withheld by the United States from a special dividend declared on their National Service Life Insurance Policies (government insurance for servicemen). The United States had withheld the amounts by way of set-off applying the

sums to reimburse itself for payments of premiums it had made to a commercial life insurance company which had issued life insurance policies (non-government insurance) to the respondents shortly before they entered the military service. After entering the service, respondents, by filing appropriate applications with their insurance company and the Veterans' Administration, brought their commercial policies under the protection of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. (1940 ed.) 540-554, *infra*, pp. 33-42. That Act permitted servicemen to protect their commercial life insurance policies against lapse for non-payment of premiums, during their periods of military service and for one year thereafter, by invoking certain of its provisions under which the United States, upon the serviceman's application, would keep such policies in force, despite default in the payment of premiums, by guaranteeing payment of such premiums. Respondents later failed to pay the premiums becoming due on their commercial policies during their period of military service and for more than a year following their discharge from the service. Pursuant to its guaranty under the Civil Relief Act, the United States paid these defaulted premiums to their insurance company.

The detailed facts relating to respondent Plesha, which are essentially the same as those concerning respondents Mabbutt and Kern, are as follows:

Three months before he entered active service in the United States Army, Plesha obtained a $2,-

500 policy on his life from the California-Western States Life Insurance Company. Immediately after his entry into the service in March 1941, Plesha made proper application to bring this policy within the protection afforded by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, *infra*, pp. 34-41. His insurer submitted appropriate forms, which were approved by the Veterans' Administration, and the protection provided by the Act was extended to his commercial insurance policy effective March 6, 1941. (R. 126.)

Thereafter, Plesha failed to pay premiums on his commercial life insurance policy (R. 127), but because that policy was under the protection of the Soldiers' and Sailors' Civil Relief Act it did not lapse. See Sec. 405, *infra*, p. 37. Plesha was separated from the service on October 20, 1945 (R. 126). When the Veterans' Administration learned of his separation, it sent him VA Form Letter FL 9-63 (R. 287-289) advising him (a) that he might terminate the protection being afforded his private insurance under the Civil Relief Act or continue such protection until two years after his discharge date;[1] (b) that any premiums accruing on his private policy but not paid by him during the period of protection would, upon an accounting, become an

[1] Under the 1942 Amendment of the Civil Relief Act, the period of protection was enlarged from one to two years following the insured's discharge (see Section 403, as amended, *infra*, p. 44). We are informed by the Veterans' Administration that persons who had obtained protection under the original Act were automatically given this extended protection unless they expressed a contrary desire. See R. 287-289.

indebtedness which he would owe his insurance company, subject to any credit allowed by the company for the then cash value of the policy; and (c) that the Government guaranteed the payment of this amount to the insurance company, and that any amount not paid by him to the company would be paid by the United States "to whom you will then owe whatever payment the Government made on your account." (R. 126-127.) Hearing nothing from Plesha, the Veterans' Administration terminated the protection of his private policy on October 20, 1947, two years after his discharge (R. 127).

Thereafter, Plesha's insurer, California-Western States Life Insurance Company, reported to the Veterans' Administration that Plesha's defaulted premiums, with interest at the policy loan rate (6% compounded annually) for the period the policy had been protected, aggregated $343.93; that after crediting the cash surrender value of $82.88 there remained a balance of $261.05 subject to payment by Plesha or the Government. On January 2, 1948, a United States Treasury check in that amount was drawn and dispatched to the Company. (R. 127.)

During the following month, Plesha was informed of this payment to his insurer and was notified that this amount represented a debt due by him to the Government (R. 127). In March, he wrote to the Veterans' Administration stating he was not in a position to make payment and asking what mode of payment he could use "in order to take care

of this obligation." He was told that he might discharge the obligation by making payments of $10 per month initially and later in increased amounts so as to "liquidate the entire indebtedness" within a year. Plesha accepted this plan of payment. Thereafter, he forwarded three checks totalling $40 which were credited to his account by the Veterans' Administration. There remained an unpaid balance of $221.05. (R. 127-128.)

Meanwhile, in May 1942, while he was in the service, Plesha was issued a government life insurance policy, under the National Service Life Insurance Act, in the amount of $10,000.[2] This policy was maintained in force by Plesha's payment of premiums until November 30, 1945. (R. 3-4.) In 1950, the Veterans' Administration determined that Plesha's NSLI policy was entitled to participate in a special dividend to the extent of $233.75, but it withheld payment of $221.05 because of its determination that he was indebted to the United States in that amount for the protection afforded his private policy under the Civil Relief Act (R. 128). It paid him the $12.70 difference, informing him that his indebtedness was thereby liquidated (R. 129), whereupon Plesha instituted this suit for the amount withheld.[3]

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[2] On November 1, 1945, this NSLI policy was reduced in amount to $5,000 (R. 4).

[3] Respondents Mabbutt and Kern, like respondent Plesha, prior to their entry into the service, had been issued policies by the California-Western States Life Insurance Company, the same insurer as in the case of Plesha. Both brought their policies under the protection of the Civil Relief Act of 1940

The District Court held (R. 110-123; 123 F. Supp. 593) that the United States, at respondents' request, had guaranteed the payment of their defaulted premiums; that as a guarantor the United States was entitled to reimbursement under common law principles; and that the legislative history of the 1940 Act fails to show a Congressional intent to abrogate this common law right of reimbursement on the part of the United States. The District Court further held that 38 U.S.C. 454a (which prohibits the United States from off-setting debts against veterans' benefits except in cases of overpayment) was no barrier to the set-off here because the payment of premiums constituted an "overpayment" within the meaning of that section.

The Court of Appeals for the Ninth Circuit reversed (Appendix A, *infra*, pp. 21-31, 227 F. 2d 624). The court observed that there was no express provision in the Civil Relief Act, in the regulations issued thereunder, or in the application form signed by the serviceman, requiring reimbursement

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and later defaulted in the premium payments. Pursuant to its guaranty, the United States subsequently paid the net amounts due on their accounts to their insurer, and then requested each insured to make reimbursement which they failed to do. And like Plesha, both Mabbutt and Kern had been issued $10,000 NSLI policies which, in 1950, were entitled to participate in a special dividend. The United States withheld $205.75 from Mabbutt's dividend, and $302.06 from Kern's dividend, as an off-set and in liquidation of the amounts, in excess of the respective cash surrender values of their commercial policies, owed by them to the United States for its payment on their behalf to protect such policies from lapse. (R. 129-135.) Their complaints likewise seek the amounts thus withheld (R. 28, 31).

of the difference between the surrender value of the policy and the premiums paid by the Government. It then pointed to the difficulty in determining the amount the United States may have expended on behalf of any particular policy,[4] and to a possible profit that it might make from the difference in interest rates.[5] In conclusion, the court held that the legislative history of the 1940 Act with reference to a Congressional purpose to require reimbursement of such amounts was too inconclusive to overcome the rule that statutes conferring benefits on servicemen should be liberally construed in their favor. The court construed the 1942 Amendment of the 1940 Act, which declares that amounts paid by the United States to an insurer shall be a debt due to the United States by the insured, to be a modification, rather than a clarification, of that Act. Finally, the court held that under the theory of *United States* v. *Gilman*, 347 U.S. 507,[6] the court must "not find common law liability in favor of the Government where it is not provided for in the statute, where it is not an 'established type of liability', and where the legislative history is in-

[4] See *Hormel* v. *United States*, 123 F. Supp. 806 (S.D.N.Y.) (pending on appeal).

[5] The United States settled with the insurer on the basis of certificates issued to the insurer which bore interest at 3% (see fn. 16, *infra*, pp. 16-17). The insured's obligation, however, was asserted to be for the amount of unpaid premiums plus interest at the policy loan rate, which averaged between 4% and 6%.

[6] In the *Gilman* case, this Court held that the United States, after having been held to be liable for damages in a Tort Claims Act suit, could not maintain a suit against its negligent employee to recover indemnity.

conclusive as to whether Congress intended such a liability" (*infra*, p. 30).[7]

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is squarely in conflict with that of the Tenth Circuit, rendered only four months earlier in *United States* v. *Hendler*, 225 F. 2d 106,[8] on a question which continues to be of importance in the administration of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 because of the numerous existing claims depending upon the interpretation of the identical provisions of the 1940 Act, prior to their amendment in 1942.

The court below recognized the conflict with the

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[7] The principal opinion, filed November 30, 1955, referred only to the claim of respondent Plesha. In a supplemental *per curiam* opinion filed January 5, 1956 (Appendix A, *infra*, p. 32), the court reversed the judgment as to respondents Mabbutt and Kern for the reasons stated in the earlier opinion.

[8] It is also contrary to two decisions by the Administrator of Veterans' Affairs which formally determined the agency's position on the question and fixed the administrative practice which has been followed since 1943. *Decisions of the Administrator of Veterans' Affairs, No. 513* (March 1, 1943) (Vol. I, p. 781; *id.*, No. 742 (April 1, 1947) (Vol. I, Supp. p. 93) (set out at R. 62-94). It is contrary also to two district court opinions in two other circuits, *United States* v. *Nichols*, 105 F. Supp. 543 (N.D. Ia.), appeal dismissed, 202 F. 2d 956, 958 (C.A. 8), and *Morton* v. *United States*, 113 F. Supp. 496 (E.D.N.Y.). *Hormel* v. *United States*, 123 F. Supp. 806 (S.D.N.Y.), the only other reported decision on the question apart from those mentioned above, and apart from the District Court opinions in *Hendler* and in the present case, accords with the decision of the court below in this case. The United States has filed a notice of appeal to the Second Circuit in *Hormel*.

Tenth Circuit, explaining its disagreement on the ground that in the *Hendler* case the court had failed to apply a "rule of liberal interpretation for the veteran" (*infra*, p. 31). The latter case was an action for reimbursement brought by the United States against a former serviceman whose defaulted premiums on his life insurance policy had, at his request, been paid by the United States, under the 1940 Act, and the surrender value of his policy was insufficient to equal the payments so made. The defendant moved to dismiss the complaint for failure to state a cause of action. The District Court, while indicating that morally the United States was entitled to reimbursement, held that the principle enunciated by this Court in *United States v. Gilman*, 347 U. S. 507, precluded recovery, and granted the motion for dismissal. On appeal, the Tenth Circuit reversed. Reviewing at length the legislative history of the 1940 Act and that of its earlier counter-part, the Soldiers' and Sailors' Civil Relief Act of 1918 (40 Stat. 440), the court held that Congress intended the transaction to be one of guaranty, that Congress did not envisage the Government's payment of a serviceman's defaulted premium to constitute a gratuity, but, instead, expected that there would be reimbursement under the usual rules of guarantyship. The Tenth Circuit ruled that it was not the purpose of the 1942 Amendment of the 1940 Act (which specifically characterizes the transaction as a guaranty and declares that a debt arises, Section 406, as amended, *infra*, pp. 45-46) to effect any change in the basic

law in that respect. The *Gilman* case was distinguished and its doctrine held to be inapplicable.

By its terms, the 1942 Amendment kept the provisions of the original Act in force with respect to policies that had been given protection before October 6, 1942, the date of its enactment (Sec. 408 (1), *infra*, pp. 46-47). Through June 30, 1942, the Veterans' Administration had approved more than 23,400 applications for protection of commercial life insurance policies under Article IV of the 1940 Act, representing insurance in the face amount of over $56,500,000; by that date (an early one in view of the fact that the period of protection continued until well after the insured left the military service) the Government had issued certificates to insurers guaranteeing defaulted premiums in the amount of almost $1,017,000. *Annual Report of the Administrator of Veterans Affairs for the Fiscal Year Ending June 30, 1942*, p. 31. While we are unable to state precisely the total number of claims for reimbursement which are now outstanding, the number is undoubtedly large.[9]

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[9] The Veterans' Administration advises us that exact statistics concerning the more than 23,000 approved applications cannot be obtained without a file-by-file examination of its individual serviceman's records. This is largely due to the fact that all applications under the 1940 Act filed by insurers who later elected to make settlement under the provisions of the 1942 Amendment (see Sec. 408(2), *infra*, p. 47) lost their identity as 1940 cases in VA's records, since they were thereafter handled administratively much like 1942 cases, that is, these insurers surrendered all certificates on hand, no longer filed Monthly Difference Reports, and VA issued no adidtional certificates to them.

The Veterans' Administration also informs us that more than 4,700 certificates, representing defaulted premiums in

Since March 1943, when the Veterans' Administration formally ruled that a debt rather than a gratuity resulted from the Government's payment of the insured's defaulted premiums, [10] it has been the consistent administrative practice to seek reimbursement after the United States, pursuant to its guaranty, has made payment to the insurer. There is also a record that reimbursement was similarly

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excess of $3,082,000, were issued under the provisions of the 1940 Act. Of these, upwards of 2,400 certificates, representing over $900,000, were revoked and reissued in smaller amounts from time to time as a result of payments made, reducing to some extent the outstanding indebtedness due the insurers. More than 200 certificates in the aggregate amount of almost $2,065,000 were surrendered by insurers pursuant to the terms of Section 408(2) of the 1942 Amendment, *infra*, p. 47, prior to January 6, 1943. Under the 1942 Amendment, the complicated monthly report and ultimate settlement system of the 1940 Act was largely discarded. The United States, after the Amendment, simply paid the insurance company the difference between (a) the cash surrender value and (b) the amount of defaulted premiums plus interest at the policy loan rate. Payment was made on a per policy basis when the policy lapsed. See Section 406, *infra*, pp. 45-46. As to policies already protected under the 1940 Act, the company could elect to settle under the simpler method of the 1942 Amendment; if it failed so to elect within 90 days after enactment of the Amendment, the old method of settlement was retained. See Section 408(2), as amended, *infra*, p. 47.

Additionally, certificates (not surrendered under the 1942 Amendment) in the amount of over $53,000 plus interest have already been redeemed, and there are almost $60,000 in certificates still outstanding.

[10] *Decisions of the Administrator of Veterans' Affairs, No. 515* (March 1, 1943), Vol. I, p. 781. The question was carefully and extensively reexamined by the Administrator, who reaffirmed his earlier ruling, in *Decisions, supra, No. 742*, Vol. 1, Supp., p. 93 (set out at R. 62-94).

sought and obtained under the 1918 Act.[11] Many collections under the 1940 Act have been effected administratively through the years; where payment might cause hardship, arrangements have been made for payment on the installment plan, as in the case of respondent Plesha (see *supra*, p. 6); and, in numerous instances, payment was effected by set-off against NSLI dividends. If the decision below is permitted to stand, the propriety of all of these payments and collections will be shrouded in doubt.

Over 325 claims for reimbursement, in which the insured servicemen have refused payment, have already been referred to the Department of Justice by the General Accounting Office for litigation to enforce collection. These claims arise in every judicial circuit in the country. The Veterans' Administration estimates that there are hundreds, possibly thousands, of other outstanding claims which may have to be similarly referred. While a few suits have been filed on the claims previously referred to the Department of Justice for collection, in most instances the Government has deferred instituting litigation pending clarification by the courts as to the respective rights of the parties. In that connection, the *Hendler* case, *supra*, and the instant case have been regarded as test cases, because these were the first to reach the

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[11] *Decisions of the Administration of Veterans' Affairs, No. 742*, Vol. 1, Supp., p. 93, 98; *Report of the United States Veterans' Bureau* (1924), p. 445.

appellate level. Resolution of the existing conflict is therefore essential to a uniform disposition of the many like claims; in the absence of an authoritative ruling by this Court, suits will probably have to be instituted and the identical issue litigated in numerous districts and circuits.[12]

2. It is the position of the Government that the decision of the Ninth Circuit below is erroneous, and that the conclusion of the Tenth Circuit in the *Hendler* case is correct. Under the decision of the court below, an insured, although he may keep his insurance in full force without paying premiums by the mere filing of an application, has the option to pay or not to pay the defaulted premiums. If he does not pay them and if the cash surrender value of his policy is not sufficient in amount to meet them, he is without personal obligation to pay the difference, despite the fact that he has had value received in the form of full insurance protection during the period involved.

This result, we submit, is contrary to the express purposes of the 1940 Act. Those purposes are stated in Section 100, *infra*, p. 34, to be the "*temporary suspension* of legal proceedings and *transactions* which may prejudice the civil rights of persons in such service during the period herein specified" [emphasis added]. And nowhere in the statute is there disclosed a purpose that the Act

[12] A notice of appeal to the Court of Appeals for the Second Circuit has already been filed in *Hormel* v. *United States*, 123 F. Supp. 806 (S.D.N.Y.), which raises precisely the same issues as the instant case.

shall do other than temporarily defer the enforcement of a serviceman's legal obligations.[13] The extending to a serviceman of a gratuitous benefit in the form of a complete cancellation of his personal obligation to pay ultimately the premiums on his validly enforceable insurance policy is not in harmony with this purpose, and an intention to accomplish that result should not, therefore, be read into the statute in the absence of express language.

Moreover, the extending of such gratuitous benefits is a result which Congress endeavored to avoid when it enacted the Soldiers' and Sailors' Civil Relief Act of 1918 (40 Stat. 440), the substantially identical predecessor of the 1940 Act.[14] The legislative history of the 1918 Act shows that Congress did not intend that Article IV of that statute would permanently cancel a serviceman's legal obligation to pay his premiums in full where the insurance is kept in force by the provisions of the Act upon his application and consent.[15]

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[13] The Act covers a variety of subjects, relating to servicemen, other than commercial insurance policies, such as stay of court proceedings and execution, non-eviction of servicemen's dependents, suspension of mortgage foreclosures and installment contracts, extensions of statutes of limitations, etc., all of which are matters of deferment only and not outright cancellations of obligations or liabilities. 54 Stat. 1180-1183.

[14] Since the 1940 Act is a substantial reenactment of the 1918 Act, recourse to the history of the earlier Act is, of course, pertinent in construing the later statute. *Boone* v. *Lightner*, 319 U.S. 561, 565-569.

[15] When the bill (S. 2859, 65th Cong., 1st sess.) which later became the 1918 Act was originally introduced, Section 13 merely prohibited the lapse of insurance policies of servicemen

Although Article IV of the 1940 Act does not expressly characterize as a guaranty the transaction whereby the Government undertook the payment of a serviceman's premiums if he should not pay them, that transaction was plainly a guaranty. [10] And it is, of course, an elementary rule of

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for non-payment of premiums and provided that the defaulted premiums should be charged to the policy as a loan which might be paid with interest at the policy loan rate within six months after the termination of the serviceman's military service. Spokesmen for insurance companies objected to this feature of the bill because it failed to provide a consensual and enforcible obligation; they argued that if they continued to extend insurance to the serviceman, they would have no enforcible claim against the insured, because the insured had not requested that his policy be kept in force. *Hearings and Memoranda on S. 2859 and H.R. 6361*, 65th Cong., 1st and 2d sess., p. 102 *et seq.* To met this objection, the bill was revised so as to provide in substance, for a binding obligation from the insured to the insurer for premiums becoming due but not paid while the insured was in military service, plus a guaranty by the United States that these defaulted premiums would be paid. The revised bill ultimately became Article IV of the 1918 Act (see *ibid.*; H. Rep. No. 181, 65th Cong., 1st sess., p. 7), and its provision finally were reincorporated, with slight changes, in the 1940 Act. See H. Rep. No. 3001, 76th Cong., 3d sess., p. 3; S. Rep. No. 2109, 76th Cong., 3d sess., p. 3.

[10] The transaction was, in substance, carried out as follows: The protection of the Act was available only to those servicemen who filed an application with their insurer and a copy thereof with the Veterans' Administration. The form of the application is set forth in 38 C.F.R. (1941 Supp.) 10.3300. The application form required the serviceman to state specifically that the application "is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article [Article IV]." Section 401, infra, p. 35. Upon receipt of the application form, the insurer filed a report on the insurance policy with the Veterans' Administration, 38 C.F.R. (1941 Supp.) 10.3300, 10.3301. By receiving and filing the application, the insurer was also deemed to have consented to any necessary modification of the policy. Section 401, *infra*, p. 35. The Veterans'

the law of guaranty that where a third person has, at the request of a principal debtor, paid the indebtedness, the principal debtor is obligated to reimburse the guarantor. Even in the absence of an express contract, he is impliedly bound to reimburse his guarantor. 4 *Williston on Contracts* (Rev. Ed.), p. 3635; 24 Am. Jur. 956. This accepted rule refutes the indication of the court below that there is no "established type of liability" (*infra*, p. 30) in the circumstances of this case. And the holding of the court below that the United States is limited to the remedies mentioned in the Act (*i.e.*, a first lien upon the policy, Sec. 408, *infra*, p. 39) is likewise unsupported, for there is nothing in the Act to show a Congressional purpose so to limit the Government's remedy, and the lien itself indicates a Congressional intent not to provide gratuitous insurance or to cancel the serviceman's legal liability. *United States* v. *Nichols*, 105 F. Supp. 543, 547 (N.D. Ia.). The lien is a summary remedy, a device utilized for the purpose of giving the United States greater security against possible

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Administration then determined whether the applying serviceman was eligible for protection under the Act. Protection was limited to certain types of insurance not exceeding a stated amount. Sections 402-404, *infra*, pp. 35-37. The Act provided for monthly accounting between the insurer and the Government, the insurer reporting information concerning the policies on which premiums had or had not been paid. Section 406, *infra*, pp. 37-38. The Veterans Administration would then deliver to the insurer a certificate for the unpaid premiums with interest. The insurer kept the certificates until the expiration of one year after the Act ceased to be effective, when a final accounting was had between the insurer and the Government, at which time the certificates were paid. See Sections 411, 412, 604, *infra*, pp. 40, 41, 42.

loss, and is not inconsistent with the common law remedy of reimbursement. A common law remedy is not ordinarily regarded as taken away by statute except by express enactment or necessary implication. *Shriver* v. *Woodbine Bank,* 285 U. S. 467, 478-479; *United States* v. *Chamberlin,* 219 U. S. 250; *United States* v. *Stevenson,* 215 U. S. 190, 197-199.

It also seems pertinent to note that the interpretation placed by the court below on Article IV of the 1940 Act produces inequitable, if not discriminatory, results. See Decisions of the Administrator of Veterans' Affairs, Decision No. 742, (Vol. 1, Supp. 93) (R. 62, 86-89.) For example, servicemen such as respondents who survived the war and permitted their policies to lapse, were, under the interpretation of the court below, entitled to receive a gratuity if the cash surrender value of their policies was not sufficient to reimburse the United States, for they received full insurance protection for the periods involved without paying the full premium. But under the decision below, those former servicemen who did not desire their policies to lapse after the expiration of the period of protection provided by the Act, were entitled to no gratuity at all. For the Act obliged them to pay their defaulted premiums in full (plus interest at the policy loan rate) if their policies were to be kept in force beyond the protection period (see Section 410, *infra,* p. 40). If a serviceman died while the policy was under protection, his widow, beneficiary, or estate was not entitled to

receive the gratuity because the Act provides that in such event the defaulted premiums (with interest) shall be deducted from the proceeds of the policy, which are always sufficient to pay the premiums (see Section 409, infra, pp. 39-40).[17] And the servicemen covered by the 1942 Amendment would not receive the gratuity even if, like respondents, they permitted their policies to lapse at the end of the protected period (see Section 406, as amended, *infra*, pp. 45-46). In short, only respondents' special class would receive a gratuity.

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[17] Additionally, it is interesting to note that only nine days before the passage of the Civil Relief Act of 1940, Congress had enacted the National Service Life Insurance Act of 1940 (54 Stat. 1008-1014), providing for government life insurance for servicemen but requiring that they pay premiums thereon. It seems unlikely that Congress, after having passed an Act requiring servicemen to pay for government life insurance, would nine days later turn around and provide a certain group of servicemen with what in substance would be free life insurance protection with commercial insurance companies whose policies carried higher premium rates than government policies. See *United States* v. *Nichols*, *supra*, 105 F. Supp. at page 558.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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